

STATE OF TEXAS §

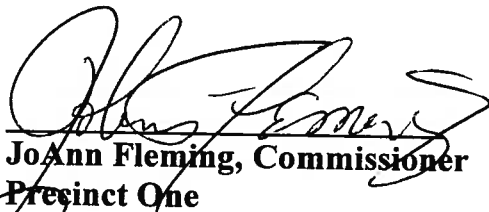
COUNTY OF SMITH §

**ORDER OF THE COMMISSIONERS COURT OF SMITH COUNTY,
TEXAS PURSUANT TO TEX. LOC. GOV'T CODE CHAPTER 232 AND
31 TEX. ADMIN. CODE CHAPTER 364, SUBCHAPTER B
ADOPTING TEXAS WATER DEVELOPMENT BOARD MODEL RULES
FOR COUNTY REGULATION OF SUBDIVISIONS**

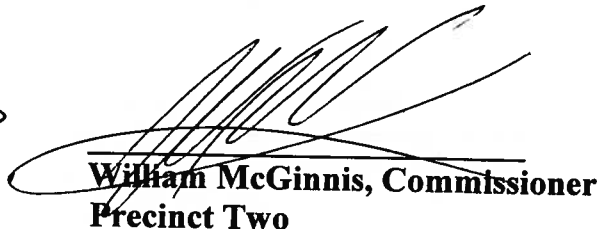
On this the 16th day of June, 2008, pursuant to chapter 232 of the Texas Local Government Code and 31 Texas Administrative Code Chapter 364, Subchapter B, the Commissioners Court of Smith County, Texas, has adopted the Model Subdivision Rules of the Texas Water Development Board effective immediately in and for the best interest of Smith County. These model rules will be incorporated into the current Smith County Subdivision Regulations and attached as "Appendix 9."



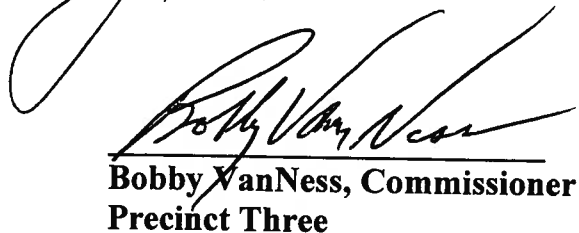
**Honorable Judge Joel Baker
Chairman of Commissioners Court**



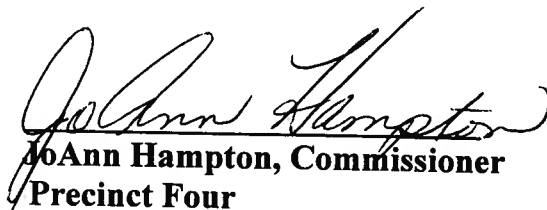
**JoAnn Fleming, Commissioner
Precinct One**



**William McGinnis, Commissioner
Precinct Two**



**Bobby VanNess, Commissioner
Precinct Three**



**JoAnn Hampton, Commissioner
Precinct Four**

TEXAS ADMINISTRATIVE CODE

*** THIS DOCUMENT REFLECTS ALL RULES IN EFFECT AS OF JULY 31, 2008 ***

**TITLE 31. NATURAL RESOURCES AND CONSERVATION
PART 10. TEXAS WATER DEVELOPMENT BOARD
CHAPTER 364. MODEL SUBDIVISION RULES
SUBCHAPTER B. MODEL RULES
DIVISION 1. GENERAL AND ADMINISTRATIVE PROVISIONS**

31 TAC § 364.11 (2008)

§ 364.11. Authority and Scope of Rules

These rules are adopted by Smith County, Texas, under the authority of the Local Government Code, Chapter 232 and *Water Code*, § 16.350. Notwithstanding any provision to the contrary, these rules apply only to a subdivision which creates two or more lots of five acres or less intended for residential purposes. Lots of five acres or less are presumed to be for residential purposes unless the land is restricted to nonresidential uses on the final plat and in all deeds and contracts for deeds.

§ 364.12. Purpose

It is the purpose of these rules to promote the public health of the county residents, to ensure that adequate water and wastewater facilities are provided in subdivisions within the jurisdiction of this county, and to apply the minimum state standards for water and wastewater facilities to these subdivisions.

§ 364.13. Effective Date

These rules become effective jointly as adopted with the Smith County Subdivision Regulations.

§ 364.14. Repealer

Provisions of Order(s) adopted previously in conflict with the latest revisions of the Smith County Subdivision Regulations are repealed, unless such sections or portions thereof are specifically retained herein.

§ 364.15. Plat Required

(a) The owner of a tract of land located outside the corporate limits of a municipality that divides the tract in any manner that creates two or more lots of five acres or less intended for residential purposes must have a plat of the subdivision prepared. Lots of five acres or less are presumed to be for residential purposes unless the land is restricted to nonresidential uses on the final plat and all deeds and contracts for deeds.

(b) No subdivided land shall be sold or conveyed until the subdivider:

(1) has received approval of a final plat of the tract; and

(2) has filed and recorded with the county clerk of the county in which the tract is located a legally approved plat.

(c) A division of a tract is defined as including a metes and bounds description, or any description of less than a whole parcel, in a deed of conveyance or in a contract for a deed, using a contract of sale or other executory contract, lease/purchase agreement, or using any other method to convey property.

§ 364.16. Supersession

These rules supersede any conflicting regulations of the county.

§ 364.17. Severability

If any part or provision of these regulations, or application thereof, to any person or circumstance is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other persons or circumstances. The commissioners court hereby declares that it would have enacted the remainder of these regulations without any such part, provision or application.

§ 364.18. Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--the Texas Commission on Environmental Quality and any of its predecessor or successor entities.

(2) Commissioners court (or court)--The commissioners court of Smith County, Texas.

(3) County-- Smith County, Texas.

(4) Drinking water--All water distributed by any agency or individual, public or private, for the purpose of human consumption, use in the preparation of foods or beverages,

cleaning any utensil or article used in the course of preparation or consumption of food or beverages for human beings, human bathing, or clothes washing.

(5) Engineer--A person licensed and authorized to practice engineering in the State of Texas under the Texas Engineering Practice Act.

(6) Final plat--A map or drawing and any accompanying material of a proposed subdivision prepared in a manner suitable for recording in the county records and prepared as described in these regulations.

(7) Lot--An undivided tract or parcel of land.

(8) Non-public water system--Any water system supplying water for domestic purposes which is not a public water system.

(9) OSSF--On-site sewage facilities as that term is defined in rules and/or regulations adopted by the commission, including, but not limited to, 30 TAC Chapter 285.

(10) Platted--Recorded with the county in an official plat record.

(11) Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or more at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(12) Purchaser--Shall include purchasers under executory contracts for conveyance of real property.

(13) Retail public utility--Any entity meeting the definition of a retail public utility as defined in *Water Code* § 13.002.

(14) Sewerage facilities--The devices and systems which transport domestic wastewater from residential property, treat the wastewater, and dispose of the treated water in accordance with the minimum state standards contained or referenced in these rules.

(15) Subdivider--Any owner of land or authorized agent thereof proposing to divide or dividing land so as to constitute a subdivision.

(16) Subdivision--Any tract of land divided into two or more parts that results in the creation of two or more lots of five acres or less intended for residential purposes. A subdivision includes re-subdivision (replat) of land which was previously divided.

(17) TAC--Texas Administrative Code, as compiled by the Texas Secretary of State.

(18) Water facilities--Any devices and systems which are used in the supply, collection, development, protection, storage, transmission, treatment, and/or retail distribution of water for safe human use and consumption.

§ 364.31. Scope of Standards

The establishment of a residential development with two or more lots of five acres or less where the water supply and sewer services do not meet the minimum standards of this division is prohibited. A subdivision with lots of five acres or less is presumed to be a residential development unless the land is restricted to nonresidential use on the final plat and all deeds and contracts for deeds.

§ 364.32. Water Facilities Development

(a) Public water systems.

(1) Subdividers who propose to supply drinking water by connecting to an existing public water system must provide a written agreement with the retail public utility in substantially the form attached in Appendix 1A. The agreement must provide that the retail public utility has or will have the ability to supply the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of 30 years. The agreement must reflect that the subdivider has paid the cost of water meters and other necessary connection equipment, membership fees, water rights acquisition costs, or other fees associated with connection to the public water system so that service is available to each lot upon completion of construction of the water facilities described on the final plat.

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(2) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the commission. The public water system, the water quality and system design, construction and operation shall meet the minimum criteria set forth in 30 TAC §§ 290.38-290.51 and §§ 290.101-290.120. If groundwater is to be the source of the water supply, the subdivider shall have prepared and provide a copy of a groundwater availability study that complies with the requirements of 30 TAC §§ 230.1 through 230.11 for water availability for new public water supply systems and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision. If surface water is the source of supply, the subdivider shall provide evidence that sufficient water rights have been obtained and dedicated, either

through acquisition or wholesale water supply agreement, that will provide a sufficient supply to serve the needs of the subdivision for a term of not less than 30 years.

(b) Non-public water systems. Where individual wells or other non-public water systems are proposed for the supply of drinking water to residential establishments, the subdivider shall have prepared and provide a copy of a groundwater availability study that complies with the requirements of 30 TAC §§ 230.1 through 230.11 for individual water supply wells on individual lots and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision. The water quality of the water produced from the test well must meet the standards of water quality required for community water systems as set forth in 30 TAC §§ 290.104, 290.106, 290.108 and 290.109, either:

- (1) without any treatment to the water; or
- (2) with treatment by an identified and commercially available water treatment system.

(c) Transportation of potable water. The conveyance of potable water by transport truck or other mobile device to supply the domestic needs of the subdivision is not an acceptable method, except on an emergency basis. Absence of a water system meeting the standards of these rules due to the negligence of the subdivider does not constitute an emergency.

§ 364.33. Wastewater Disposal

(a) Organized sewerage facilities.

(1) Subdividers who propose the development of an organized wastewater collection and treatment system must obtain a permit to dispose of wastes from the commission in accordance with 30 TAC Chapter 305 and obtain approval of engineering planning materials for such systems under 30 TAC Chapter 317 from the commission.

(2) Subdividers who propose to dispose of wastewater by connecting to an existing permitted facility must provide a written agreement in substantially the form attached in Appendix 1B with the retail public utility. The agreement must provide that the retail public utility has or will have the ability to treat the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of 30 years. The agreement must reflect that the subdivider has paid the cost of all fees associated with connection to the wastewater collection and treatment system have been paid so that service is available to each lot upon completion of construction of the wastewater facilities described on the final plat. Engineering plans for the proposed wastewater collection lines must comply with 30 TAC Chapter 317.

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(b) On-site sewerage facilities.

(1) On-site facilities which serve single family or multi-family residential dwellings with anticipated wastewater generations of no greater than 5,000 gallons per day must comply with 30 TAC Chapter 285.

(2) Proposals for sewerage facilities for the disposal of sewage in the amount of 5,000 gallons per day or greater must comply with 30 TAC Chapter 317.

(3) The commission or its authorized agent shall review proposals for on-site sewage disposal systems and make inspections of such systems as necessary to assure that the system is in compliance with the Texas Health and Safety Code, Chapter 366 and rules in 30 TAC Chapter 285, and in particular §§ 285.4, 285.5 and 285.30-285.39. In addition to the unsatisfactory on-site disposal systems listed in 30 TAC § 285.3(i), pit privies and portable toilets are not acceptable waste disposal systems for lots platted under these rules.

§ 364.34. Greywater Systems for Reuse of Treated Wastewater

(a) Organized or municipal sewerage systems. Any proposal for sewage collection, treatment and disposal which includes greywater reuse shall meet minimum criteria of 30 TAC Chapter 210 promulgated and administered by the commission.

(b) On-site sewerage facilities. Any proposal for on-site sewage disposal which includes provisions for greywater use shall meet the minimum criteria of 30 TAC Chapter 285.

§ 364.35. Sludge Disposal

The disposal of sludge from water treatment and sewerage facilities shall meet the criteria of 30 TAC Chapter 312 and Chapter 317.

§ 364.36. Setbacks

In areas that lack a nationally recognized fire code as listed in *Local Government Code*, § 233.062(c) and lack water lines sized for fire protection, setbacks from roads and right-of-ways shall be a minimum of 10 feet, setbacks from adjacent property lines shall be a minimum of five feet, and shall not conflict with separation or setback distances required by rules governing public utilities, on-site sewerage facilities, or drinking water supplies. Setback lines required elsewhere in the orders or rules of the county shall control to the extent greater setbacks are therein required.

§ 364.37. Number of Dwellings Per Lot

No more than one single family detached dwelling shall be located on each lot. A notation of this restriction shall be placed on the face of the final plat. This restriction shall be placed in all deeds and contracts for deeds for real estate sold within the subdivision. Proposals which include multi-family residential shall include adequate, detailed planning materials as required for determination of proper water and wastewater utility type and design.

§ 364.51. Applications for Plat Approval

(a) Owner representation. An application for approval of a plat shall be filed with the county by the record owner of the property to be subdivided or the duly authorized agent of the record owner.

(b) Standards. Every plat creating two or more lots of five acres or less for residential use shall comply with the standards of Division 2 and the requirements of Division 3 of this subchapter.

§ 364.52. Final Engineering Report

The final plat shall include on the plat or have attached to the plat an engineering report bearing the signed and dated seal of a professional engineer registered in the State of Texas. The engineering report shall discuss the availability and methodology of providing water facilities and wastewater treatment to individual lots within the subdivision. A detailed cost estimate per lot acceptable to the county shall be provided for those unconstructed water supply and distribution facilities and wastewater collection and treatment facilities which are necessary to serve each lot of the subdivision. The plan shall include a construction schedule for each significant element needed to provide adequate water or wastewater facilities. If financial guarantees are to be provided under § 364.54 of this title, the schedule shall include the start dates and completion dates.

(1) Public water systems.

(A) Where water supplies are to be provided by an existing public water system, the subdivider shall furnish an executed contractual agreement between the subdivider and the retail public utility in substantially the form attached in Appendix 1A and referenced in § 364.32(a)(1) of this title. Before final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed project which may include in addition to the county the commission and the county health department. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§ 230.1 through 230.11 for water availability for a public water supply systems and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision.

(B) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the commission and include evidence of the CCN issuance with the plat. Before final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed project. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§ 230.1 through 230.11 for water availability for a public water supply systems and certifies the long term (30 years) quantity and quality of available groundwater supplies

relative to the ultimate needs of the subdivision. If surface water is the source of supply then the final engineering report shall include evidence that sufficient water rights have been obtained and dedicated, either through acquisition or wholesale water supply agreement, that will provide a sufficient supply to serve the needs of the subdivision for a term of not less than 30 years.

(2) Non-public water systems. Where individual wells are proposed for the supply of drinking water to residences, the final engineering report shall include the quantitative and qualitative results of sampling the test wells in accordance with § 364.32 of this title. The results of such analyses shall be made available to the prospective property owners. If the water quality of the test well required pursuant to § 364.32(b) of this title does not meet the water quality standards as set forth in that section without treatment by an identified and commercially available water treatment system, then the final report must state the type of treatment system that will treat the water produced from the well to the specified water quality standards, the location of at least one commercial establishment within the county at which the system is available for purchase, and the cost of such system, the cost of installation of the system, and the estimated monthly maintenance cost of the treatment system. The final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§ 230.1 through 230.11 for water availability for individual water supply wells on individual lots and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision. The description of the required sanitary control easement shall be included.

(3) Organized sewerage facilities.

(A) Where wastewater treatment is to be provided by an existing retail public utility, the subdivider shall furnish evidence of a contractual agreement between the subdivider and the retail public utility in substantially the form attached in Appendix 1B and referenced in § 364.33(a)(2) of this title. Before final plat approval, an appropriate permit to dispose of wastes shall have been obtained from the commission and plans and specifications for the proposed wastewater collection and treatment facilities shall have been approved by all entities having jurisdiction over the proposed project.

(B) Where there is no existing retail public utility to construct and maintain the proposed sewerage facilities, the subdivider shall establish a retail public utility and obtain a CCN from the commission. Before final plat approval, a wastewater treatment permit authorizing the treatment of the wastewater for the ultimate build-out population of the subdivision shall have been obtained from the commission and plans and specifications for the proposed sewerage facilities shall have been approved by all entities having jurisdiction over the proposed project.

(4) On-site sewerage facilities. Where private on-site sewerage facilities are proposed, the final engineering report shall include planning materials required by 30 TAC § 285.4(c), including the site evaluation described by 30 TAC § 285.30 and all other information required by the county's OSSF order.

§ 364.53. Additional Information

The county may, at its option, require additional information necessary to determine the adequacy of proposed water and wastewater improvements as part of the plat approval process. Such information may include, but not be limited to:

- (1) layout of proposed street and drainage work;
- (2) legal description of the property;
- (3) existing area features;
- (4) topography;
- (5) flood plains;
- (6) description of existing easements;
- (7) layout of other utilities;
- (8) notation of deed restrictions;
- (9) public use areas; or
- (10) proposed area features.

§ 364.54. Financial Guarantees for Improvements

(a) **Applicability.** If an adequate public or non-public water system or sewerage facility is not available from a retail public utility, or are not constructed by the subdivider, to serve lots intended for residential purposes of five acres or less at the time final plat approval is sought, then the commissioners court shall require the owner of the subdivided tract to execute an agreement with the county in substantially the form attached in Appendix 2A secured by a bond, irrevocable letter of credit, or other alternative financial guarantee such as a cash deposit which meet the requirements set forth below.

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(b) **Bonds.** A bond that is submitted in compliance with subsection (a) of this section shall meet the following requirements.

(1) The bond or financial guarantee shall be payable to the county judge of the county, in his official capacity, or the judge's successor in office.

(2) The bond or financial guarantee shall be in an amount determined by the commissioners court to be adequate to ensure proper construction or installation of the public or non-public water facilities, and wastewater facilities to service the subdivision, including reasonable contingencies, but in no event shall the amount of the bond be less than the total amount needed to serve the subdivision as established by the engineer who certifies the plat.

(3) The bond shall be executed with sureties as may be approved by the commissioners court. The county shall establish criteria for acceptability of the surety companies issuing bonds that include but are not limited to:

(A) registration with the Secretary of State and be authorized to do business in Texas;

(B) authorization to issue bonds in the amount required by the commissioners court; and

(C) rating of at least B from Best's Key Rating Guide; or if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury.

(4) The bond shall be conditioned upon construction or installation of water and wastewater facilities meeting the criteria established by Division 2 of this subchapter and upon construction of facilities within the time stated on the plat, or on the document attached to the plat for the subdivision, or within any extension of time granted by the commissioners court.

(c) Letter of credit. A letter of credit that is submitted in compliance with subsection (a) of this section shall meet the following requirements.

(1) Any letter of credit submitted as a financial guarantee for combined amounts greater than \$ 10,000 and less than \$ 250,000 must be from financial institutions which meet the following qualifications.

(A) Bank qualifications:

(i) must be federally insured;

(ii) Sheshunoff rating must be 10 or better and primary capital must be at least 6.0% of total assets; and

(iii) total assets must be at least \$ 25 million.

(B) Savings and loan association qualifications:

(i) must be federally insured;

(ii) tangible capital must be at least 1.5% of total assets and total assets must be greater than \$ 25 million or tangible capital must be at least 3.0% of total assets if total assets are less than \$ 25 million; and

(iii) Sheshunoff rating must be 30 or better.

(C) Other financial institutions qualifications:

(i) the letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a county investment; and

(ii) the investment instrument must be registered in the county's name and the county must receive safekeeping receipts for all collateral before the letter of credit is accepted.

(2) Any letter of credit submitted as a financial guarantee for combined amounts greater than \$ 250,000 must be from financial institutions which meet the following qualifications.

(A) Bank qualifications:

(i) must be federally insured;

(ii) Sheshunoff rating must be thirty or better and primary capital must be at least 7.0% of total assets; and

(iii) total assets must be at least \$ 75 million.

(B) Savings and loan association qualifications:

(i) must be federally insured;

(ii) tangible capital must be at least 3.0% of total assets and total assets must be greater than \$ 75 million, or tangible capital must be at least 5.0% of total assets if total assets are less than \$ 75 million; and

(iii) Sheshunoff rating must be 30 or better.

(C) Other financial institutions qualifications:

(i) the letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a county investment; and

(ii) the investment instrument must be registered in the county's name and the county must receive safekeeping receipts for all collateral before the letter of credit is accepted.

(3) The letter of credit shall list as sole beneficiary the county judge of the county, in his official capacity, or the judge's successor in office, and must be approved by the county judge of the county. The form of the letter of credit shall be modeled after the form attached in Appendix 2B.

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(4) The letter of credit shall be conditioned upon installation or construction of water and wastewater facilities meeting the criteria established under Division 2 of this subchapter and upon construction of facilities within the time stated on the plat, or on the document attached to the plat for the subdivision, or within any extension of time granted by the commissioners court.

(d) Financial guarantee. The county will determine the amount of the bond, letter of credit, or cash deposit required to ensure proper construction of adequate water and wastewater facilities in the subdivision.

(e) Alternative to county accepting a financial guarantee. The county may approve a final plat under this section without receiving a financial guarantee in the name of the county if:

- (1) the property being subdivided lies wholly within the jurisdiction of the county;
- (2) the property being subdivided lies wholly within the extra-territorial jurisdiction of a municipality; and
- (3) the municipality has executed an interlocal agreement with the county that imposes the obligation on the municipality to:
 - (A) accept the bonds, letters of credit, or other financial guarantees, that meet the requirements of this section;
 - (B) execute the construction agreement with the subdivider; and
 - (C) assume the obligations to enforce the terms of the financial guarantee under the conditions set forth therein and complete construction of the facilities identified in the construction agreement.

§ 364.55. Review and Approval of Final Plats

- (a) Scope of review. The county will review the final plat to determine whether it meets the standards of Division 2 and the requirements of Division 3 of this subchapter.
- (b) Disapproval authority. The commissioners court shall refuse to approve a plat if it does not meet the requirements prescribed by or under these rules.
- (c) Prerequisites to approval. Final plat approval shall not be granted unless the subdivider has accomplished the following:
 - (1) dedicated the sites for the adequate water and sewerage facilities identified in the final plat to the appropriate retail public utility responsible for operation and maintenance of the facilities; and
 - (2) provided evidence that the water facilities and sewerage facilities have been constructed and installed in accordance with the criteria established within these rules and the approvals from the commission of the plans and specifications for such construction, including any change orders filed with these agencies; or
 - (3) obtained all necessary permits for the proposed water facilities and sewerage facilities (other than for OSSF permits on individual lots within the proposed subdivision) and has entered into a financial agreement with the county secured by a bond or other alternative financial guarantee such as a cash deposit or letter of credit for the provision of water and sewerage facilities with the bond or financial guarantee meeting the criteria established in Division 3 of this subchapter.

§ 364.56. Time Extensions for Providing Facilities

- (a) Reasonableness. The commissioners court may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the required water and sewer service facilities must be fully operable if:

(1) any financial guarantees provided with the final plat as originally submitted are effective for the time of the requested extension or new financial guarantees that comply with § 364.54 are submitted which will be effective for the period of the extension; and

(2) the court finds the extension is reasonable and not contrary to the public interest.

(b) Timeliness. If the facilities are fully operable before the expiration of the extension period, the facilities are considered to have been made fully operable in a timely manner.

(c) Unreasonableness. An extension is not reasonable if it would allow a residence in the subdivision to be inhabited without water or sewer services that meet the standards of Division 2 of this subchapter.

§ 364.57. Criteria for Subdivisions that Occurred Prior to September 1, 1989

(a) Authority and scope. This section shall apply only to tracts of land that were divided into two or more parts to lay out a subdivision before September 1, 1989 and have not been platted or recorded. This section is in addition to the authority of the county to grant a delay or variance pursuant to *Local Government Code § 232.043* or a rule of the county adopted pursuant to such provision.

(b) Purpose. It is the purpose of this section to promote the public health of the county residents, to ensure that adequate water and sewerage facilities are provided in subdivisions within the jurisdiction of this county, and to establish the minimum standards for pre-1989 subdivisions for which no plat has been filed or recorded in the records of the county.

(c) Required plat. In the event that the owner of tract of land located outside the limits of a municipality who subdivided the tract into two or more parts to lay out a subdivision of the tract prior to September 1, 1989, including an addition, or to lay out suburban lots or building lots, and to lay out streets, alleys, squares, parks or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts, was legally obligated to, but has failed to have a plat of the subdivision prepared, approved by the commissioners court, and filed, the owner of a residential lot which was created by the subdivision may have a plat of the individual lot prepared and approved by the commissioners court as provided in this section in lieu of the filing of a plat of the subdivision.

(d) Special criteria. The commissioners court may approve the plat of a residential lot which does not comply with the provisions of §§ 364.15(b) of this title (sale restrictions), 364.36 of this title (Setbacks), 364.37 of this title (Number of Dwellings per Lot), 364.52 of this title (Final Engineering Report), and 364.54 of this title (Financial Guarantees for Improvements) as applied to an individual subdivided lot if such approval is in harmony with the general purpose and intent of these rules so that the public health, safety, and welfare may be secured and substantial justice done.

(1) Owners of individual lots in a single unplatted subdivision may file a joint request for approval of their respective individual residential lots.

(2) An application for approval of the plat of an individual lot shall be made in writing. The application shall state specifically the chapter, section, or subsection with which the plat does not comply and from which a waiver is being requested. The application shall contain available information and documentation which supports the requested approval. The applicant shall also provide such additional documentation as the commissioners court may request to support the application, including:

(A) a copy of a dated plat, sales contract, utility records, or other acceptable documentation that the subdivision occurred prior to September 1, 1989;

(B) the name and address of the original subdivider or the subdivider's authorized agent, if known;

(C) a survey and plat of the lot for which approval is requested, showing existing residences, roads, and utilities; and

(D) a deed, an affidavit of ownership or other evidence of ownership of the lot for which approval is requested.

(3) Approval of plats of individual lots shall be granted subject to the limitations of state law, and based on written findings by the commissioners court that:

(A) the lot for which approval is requested is within a tract that was subdivided prior to September 1, 1989, and is not owned by the original subdivider;

(B) a plat was required for the subdivision, but has not been filed with the county by the subdivider legally obligated to file it;

(C) an existing, currently occupied residential dwelling is located on the lot;

(D) existing water and sewer services which comply with the minimum standards set forth herein are available to the lot; and

(E) the request is reasonable, compliance with specified sections of these rules is impractical, and a waiver is not contrary to the public health and safety.

(e) Final determination. The commissioners court shall make the final decision on an application for a waiver, following review and recommendation by the county planning commission or department, if any. The applicant may withdraw a request for a waiver at any point in the process. If the requested waiver application is approved by the commissioners court, the county shall issue a certificate stating that a plat of the residential lot has been reviewed and approved.

§ 364.71. Oversight

The owner, by submitting a plat, acknowledges the authority of the county and state agencies to lawfully enter and inspect property for purposes of execution of their statutory duties. Such inspection will not release the owner from any obligation to comply with the requirements of these rules.

§ 364.72. General Enforcement Authority of County

The provisions of this chapter are enforceable pursuant to the specific provisions hereof related to enforcement and state law including Water Code, Chapter 7 and §§ 16.352, 16.353, 16.3535, 16.354, and 16.3545, and *Local Government Code*, § 232.037 and § 232.080.

TEXAS ADMINISTRATIVE CODE

*** THIS DOCUMENT REFLECTS ALL RULES IN EFFECT AS OF JULY 31, 2008 ***

**TITLE 31. NATURAL RESOURCES AND CONSERVATION
PART 10. TEXAS WATER DEVELOPMENT BOARD
CHAPTER 364. MODEL SUBDIVISION RULES
SUBCHAPTER B. MODEL RULES
DIVISION 1. GENERAL AND ADMINISTRATIVE PROVISIONS**

31 TAC § 364.11 (2008)

§ 364.11. Authority and Scope of Rules

These rules are adopted by Smith County, Texas, under the authority of the Local Government Code, Chapter 232 and *Water Code*, § 16.350. Notwithstanding any provision to the contrary, these rules apply only to a subdivision which creates two or more lots of five acres or less intended for residential purposes. Lots of five acres or less are presumed to be for residential purposes unless the land is restricted to nonresidential uses on the final plat and in all deeds and contracts for deeds.

§ 364.12. Purpose

It is the purpose of these rules to promote the public health of the county residents, to ensure that adequate water and wastewater facilities are provided in subdivisions within the jurisdiction of this county, and to apply the minimum state standards for water and wastewater facilities to these subdivisions.

§ 364.13. Effective Date

These rules become effective jointly as adopted with the Smith County Subdivision Regulations.

§ 364.14. Repealer

Provisions of Order(s) adopted previously in conflict with the latest revisions of the Smith County Subdivision Regulations are repealed, unless such sections or portions thereof are specifically retained herein.

§ 364.15. Plat Required

(a) The owner of a tract of land located outside the corporate limits of a municipality that divides the tract in any manner that creates two or more lots of five acres or less intended for residential purposes must have a plat of the subdivision prepared. Lots of five acres or less are presumed to be for residential purposes unless the land is restricted to nonresidential uses on the final plat and all deeds and contracts for deeds.

(b) No subdivided land shall be sold or conveyed until the subdivider:

(1) has received approval of a final plat of the tract; and

(2) has filed and recorded with the county clerk of the county in which the tract is located a legally approved plat.

(c) A division of a tract is defined as including a metes and bounds description, or any description of less than a whole parcel, in a deed of conveyance or in a contract for a deed, using a contract of sale or other executory contract, lease/purchase agreement, or using any other method to convey property.

§ 364.16. Supersession

These rules supersede any conflicting regulations of the county.

§ 364.17. Severability

If any part or provision of these regulations, or application thereof, to any person or circumstance is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other persons or circumstances. The commissioners court hereby declares that it would have enacted the remainder of these regulations without any such part, provision or application.

§ 364.18. Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--the Texas Commission on Environmental Quality and any of its predecessor or successor entities.

(2) Commissioners court (or court)--The commissioners court of Smith County, Texas.

(3) County-- Smith County, Texas.

(4) Drinking water--All water distributed by any agency or individual, public or private, for the purpose of human consumption, use in the preparation of foods or beverages,

cleaning any utensil or article used in the course of preparation or consumption of food or beverages for human beings, human bathing, or clothes washing.

(5) Engineer--A person licensed and authorized to practice engineering in the State of Texas under the Texas Engineering Practice Act.

(6) Final plat--A map or drawing and any accompanying material of a proposed subdivision prepared in a manner suitable for recording in the county records and prepared as described in these regulations.

(7) Lot--An undivided tract or parcel of land.

(8) Non-public water system--Any water system supplying water for domestic purposes which is not a public water system.

(9) OSSF--On-site sewage facilities as that term is defined in rules and/or regulations adopted by the commission, including, but not limited to, 30 TAC Chapter 285.

(10) Platted--Recorded with the county in an official plat record.

(11) Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or more at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(12) Purchaser--Shall include purchasers under executory contracts for conveyance of real property.

(13) Retail public utility--Any entity meeting the definition of a retail public utility as defined in *Water Code* § 13.002.

(14) Sewerage facilities--The devices and systems which transport domestic wastewater from residential property, treat the wastewater, and dispose of the treated water in accordance with the minimum state standards contained or referenced in these rules.

(15) Subdivider--Any owner of land or authorized agent thereof proposing to divide or dividing land so as to constitute a subdivision.

(16) Subdivision--Any tract of land divided into two or more parts that results in the creation of two or more lots of five acres or less intended for residential purposes. A subdivision includes re-subdivision (replat) of land which was previously divided.

(17) TAC--Texas Administrative Code, as compiled by the Texas Secretary of State.

(18) Water facilities--Any devices and systems which are used in the supply, collection, development, protection, storage, transmission, treatment, and/or retail distribution of water for safe human use and consumption.

§ 364.31. Scope of Standards

The establishment of a residential development with two or more lots of five acres or less where the water supply and sewer services do not meet the minimum standards of this division is prohibited. A subdivision with lots of five acres or less is presumed to be a residential development unless the land is restricted to nonresidential use on the final plat and all deeds and contracts for deeds.

§ 364.32. Water Facilities Development

(a) Public water systems.

(1) Subdividers who propose to supply drinking water by connecting to an existing public water system must provide a written agreement with the retail public utility in substantially the form attached in Appendix 1A. The agreement must provide that the retail public utility has or will have the ability to supply the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of 30 years. The agreement must reflect that the subdivider has paid the cost of water meters and other necessary connection equipment, membership fees, water rights acquisition costs, or other fees associated with connection to the public water system so that service is available to each lot upon completion of construction of the water facilities described on the final plat.

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(2) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the commission. The public water system, the water quality and system design, construction and operation shall meet the minimum criteria set forth in 30 TAC §§ 290.38-290.51 and §§ 290.101-290.120. If groundwater is to be the source of the water supply, the subdivider shall have prepared and provide a copy of a groundwater availability study that complies with the requirements of 30 TAC §§ 230.1 through 230.11 for water availability for new public water supply systems and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision. If surface water is the source of supply, the subdivider shall provide evidence that sufficient water rights have been obtained and dedicated, either

through acquisition or wholesale water supply agreement, that will provide a sufficient supply to serve the needs of the subdivision for a term of not less than 30 years.

(b) Non-public water systems. Where individual wells or other non-public water systems are proposed for the supply of drinking water to residential establishments, the subdivider shall have prepared and provide a copy of a groundwater availability study that complies with the requirements of 30 TAC §§ 230.1 through 230.11 for individual water supply wells on individual lots and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision. The water quality of the water produced from the test well must meet the standards of water quality required for community water systems as set forth in 30 TAC §§ 290.104, 290.106, 290.108 and 290.109, either:

- (1) without any treatment to the water; or
- (2) with treatment by an identified and commercially available water treatment system.

(c) Transportation of potable water. The conveyance of potable water by transport truck or other mobile device to supply the domestic needs of the subdivision is not an acceptable method, except on an emergency basis. Absence of a water system meeting the standards of these rules due to the negligence of the subdivider does not constitute an emergency.

§ 364.33. Wastewater Disposal

(a) Organized sewerage facilities.

(1) Subdividers who propose the development of an organized wastewater collection and treatment system must obtain a permit to dispose of wastes from the commission in accordance with 30 TAC Chapter 305 and obtain approval of engineering planning materials for such systems under 30 TAC Chapter 317 from the commission.

(2) Subdividers who propose to dispose of wastewater by connecting to an existing permitted facility must provide a written agreement in substantially the form attached in Appendix 1B with the retail public utility. The agreement must provide that the retail public utility has or will have the ability to treat the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of 30 years. The agreement must reflect that the subdivider has paid the cost of all fees associated with connection to the wastewater collection and treatment system have been paid so that service is available to each lot upon completion of construction of the wastewater facilities described on the final plat. Engineering plans for the proposed wastewater collection lines must comply with 30 TAC Chapter 317.

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(b) On-site sewerage facilities.

(1) On-site facilities which serve single family or multi-family residential dwellings with anticipated wastewater generations of no greater than 5,000 gallons per day must comply with 30 TAC Chapter 285.

(2) Proposals for sewerage facilities for the disposal of sewage in the amount of 5,000 gallons per day or greater must comply with 30 TAC Chapter 317.

(3) The commission or its authorized agent shall review proposals for on-site sewage disposal systems and make inspections of such systems as necessary to assure that the system is in compliance with the Texas Health and Safety Code, Chapter 366 and rules in 30 TAC Chapter 285, and in particular §§ 285.4, 285.5 and 285.30-285.39. In addition to the unsatisfactory on-site disposal systems listed in 30 TAC § 285.3(i), pit privies and portable toilets are not acceptable waste disposal systems for lots platted under these rules.

§ 364.34. Greywater Systems for Reuse of Treated Wastewater

(a) Organized or municipal sewerage systems. Any proposal for sewage collection, treatment and disposal which includes greywater reuse shall meet minimum criteria of 30 TAC Chapter 210 promulgated and administered by the commission.

(b) On-site sewerage facilities. Any proposal for on-site sewage disposal which includes provisions for greywater use shall meet the minimum criteria of 30 TAC Chapter 285.

§ 364.35. Sludge Disposal

The disposal of sludge from water treatment and sewerage facilities shall meet the criteria of 30 TAC Chapter 312 and Chapter 317.

§ 364.36. Setbacks

In areas that lack a nationally recognized fire code as listed in *Local Government Code*, § 233.062(c) and lack water lines sized for fire protection, setbacks from roads and right-of-ways shall be a minimum of 10 feet, setbacks from adjacent property lines shall be a minimum of five feet, and shall not conflict with separation or setback distances required by rules governing public utilities, on-site sewerage facilities, or drinking water supplies. Setback lines required elsewhere in the orders or rules of the county shall control to the extent greater setbacks are therein required.

§ 364.37. Number of Dwellings Per Lot

No more than one single family detached dwelling shall be located on each lot. A notation of this restriction shall be placed on the face of the final plat. This restriction shall be placed in all deeds and contracts for deeds for real estate sold within the subdivision. Proposals which include multi-family residential shall include adequate, detailed planning materials as required for determination of proper water and wastewater utility type and design.

§ 364.51. Applications for Plat Approval

(a) Owner representation. An application for approval of a plat shall be filed with the county by the record owner of the property to be subdivided or the duly authorized agent of the record owner.

(b) Standards. Every plat creating two or more lots of five acres or less for residential use shall comply with the standards of Division 2 and the requirements of Division 3 of this subchapter.

§ 364.52. Final Engineering Report

The final plat shall include on the plat or have attached to the plat an engineering report bearing the signed and dated seal of a professional engineer registered in the State of Texas. The engineering report shall discuss the availability and methodology of providing water facilities and wastewater treatment to individual lots within the subdivision. A detailed cost estimate per lot acceptable to the county shall be provided for those unconstructed water supply and distribution facilities and wastewater collection and treatment facilities which are necessary to serve each lot of the subdivision. The plan shall include a construction schedule for each significant element needed to provide adequate water or wastewater facilities. If financial guarantees are to be provided under § 364.54 of this title, the schedule shall include the start dates and completion dates.

(1) Public water systems.

(A) Where water supplies are to be provided by an existing public water system, the subdivider shall furnish an executed contractual agreement between the subdivider and the retail public utility in substantially the form attached in Appendix 1A and referenced in § 364.32(a)(1) of this title. Before final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed project which may include in addition to the county the commission and the county health department. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§ 230.1 through 230.11 for water availability for a public water supply systems and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision.

(B) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the commission and include evidence of the CCN issuance with the plat. Before final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed project. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§ 230.1 through 230.11 for water availability for a public water supply systems and certifies the long term (30 years) quantity and quality of available groundwater supplies

relative to the ultimate needs of the subdivision. If surface water is the source of supply then the final engineering report shall include evidence that sufficient water rights have been obtained and dedicated, either through acquisition or wholesale water supply agreement, that will provide a sufficient supply to serve the needs of the subdivision for a term of not less than 30 years.

(2) Non-public water systems. Where individual wells are proposed for the supply of drinking water to residences, the final engineering report shall include the quantitative and qualitative results of sampling the test wells in accordance with § 364.32 of this title. The results of such analyses shall be made available to the prospective property owners. If the water quality of the test well required pursuant to § 364.32(b) of this title does not meet the water quality standards as set forth in that section without treatment by an identified and commercially available water treatment system, then the final report must state the type of treatment system that will treat the water produced from the well to the specified water quality standards, the location of at least one commercial establishment within the county at which the system is available for purchase, and the cost of such system, the cost of installation of the system, and the estimated monthly maintenance cost of the treatment system. The final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§ 230.1 through 230.11 for water availability for individual water supply wells on individual lots and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision. The description of the required sanitary control easement shall be included.

(3) Organized sewerage facilities.

(A) Where wastewater treatment is to be provided by an existing retail public utility, the subdivider shall furnish evidence of a contractual agreement between the subdivider and the retail public utility in substantially the form attached in Appendix 1B and referenced in § 364.33(a)(2) of this title. Before final plat approval, an appropriate permit to dispose of wastes shall have been obtained from the commission and plans and specifications for the proposed wastewater collection and treatment facilities shall have been approved by all entities having jurisdiction over the proposed project.

(B) Where there is no existing retail public utility to construct and maintain the proposed sewerage facilities, the subdivider shall establish a retail public utility and obtain a CCN from the commission. Before final plat approval, a wastewater treatment permit authorizing the treatment of the wastewater for the ultimate build-out population of the subdivision shall have been obtained from the commission and plans and specifications for the proposed sewerage facilities shall have been approved by all entities having jurisdiction over the proposed project.

(4) On-site sewerage facilities. Where private on-site sewerage facilities are proposed, the final engineering report shall include planning materials required by 30 TAC § 285.4(c), including the site evaluation described by 30 TAC § 285.30 and all other information required by the county's OSSF order.

§ 364.53. Additional Information

The county may, at its option, require additional information necessary to determine the adequacy of proposed water and wastewater improvements as part of the plat approval process. Such information may include, but not be limited to:

- (1) layout of proposed street and drainage work;
- (2) legal description of the property;
- (3) existing area features;
- (4) topography;
- (5) flood plains;
- (6) description of existing easements;
- (7) layout of other utilities;
- (8) notation of deed restrictions;
- (9) public use areas; or
- (10) proposed area features.

§ 364.54. Financial Guarantees for Improvements

(a) **Applicability.** If an adequate public or non-public water system or sewerage facility is not available from a retail public utility, or are not constructed by the subdivider, to serve lots intended for residential purposes of five acres or less at the time final plat approval is sought, then the commissioners court shall require the owner of the subdivided tract to execute an agreement with the county in substantially the form attached in Appendix 2A secured by a bond, irrevocable letter of credit, or other alternative financial guarantee such as a cash deposit which meet the requirements set forth below.

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(b) **Bonds.** A bond that is submitted in compliance with subsection (a) of this section shall meet the following requirements.

(1) The bond or financial guarantee shall be payable to the county judge of the county, in his official capacity, or the judge's successor in office.

(2) The bond or financial guarantee shall be in an amount determined by the commissioners court to be adequate to ensure proper construction or installation of the public or non-public water facilities, and wastewater facilities to service the subdivision, including reasonable contingencies, but in no event shall the amount of the bond be less than the total amount needed to serve the subdivision as established by the engineer who certifies the plat.

(3) The bond shall be executed with sureties as may be approved by the commissioners court. The county shall establish criteria for acceptability of the surety companies issuing bonds that include but are not limited to:

(A) registration with the Secretary of State and be authorized to do business in Texas;

(B) authorization to issue bonds in the amount required by the commissioners court; and

(C) rating of at least B from Best's Key Rating Guide; or if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury.

(4) The bond shall be conditioned upon construction or installation of water and wastewater facilities meeting the criteria established by Division 2 of this subchapter and upon construction of facilities within the time stated on the plat, or on the document attached to the plat for the subdivision, or within any extension of time granted by the commissioners court.

(c) Letter of credit. A letter of credit that is submitted in compliance with subsection (a) of this section shall meet the following requirements.

(1) Any letter of credit submitted as a financial guarantee for combined amounts greater than \$ 10,000 and less than \$ 250,000 must be from financial institutions which meet the following qualifications.

(A) Bank qualifications:

(i) must be federally insured;

(ii) Sheshunoff rating must be 10 or better and primary capital must be at least 6.0% of total assets; and

(iii) total assets must be at least \$ 25 million.

(B) Savings and loan association qualifications:

(i) must be federally insured;

(ii) tangible capital must be at least 1.5% of total assets and total assets must be greater than \$ 25 million or tangible capital must be at least 3.0% of total assets if total assets are less than \$ 25 million; and

(iii) Sheshunoff rating must be 30 or better.

(C) Other financial institutions qualifications:

(i) the letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a county investment; and

(ii) the investment instrument must be registered in the county's name and the county must receive safekeeping receipts for all collateral before the letter of credit is accepted.

(2) Any letter of credit submitted as a financial guarantee for combined amounts greater than \$ 250,000 must be from financial institutions which meet the following qualifications.

(A) Bank qualifications:

(i) must be federally insured;

(ii) Sheshunoff rating must be thirty or better and primary capital must be at least 7.0% of total assets; and

(iii) total assets must be at least \$ 75 million.

(B) Savings and loan association qualifications:

(i) must be federally insured;

(ii) tangible capital must be at least 3.0% of total assets and total assets must be greater than \$ 75 million, or tangible capital must be at least 5.0% of total assets if total assets are less than \$ 75 million; and

(iii) Sheshunoff rating must be 30 or better.

(C) Other financial institutions qualifications:

(i) the letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a county investment; and

(ii) the investment instrument must be registered in the county's name and the county must receive safekeeping receipts for all collateral before the letter of credit is accepted.

(3) The letter of credit shall list as sole beneficiary the county judge of the county, in his official capacity, or the judge's successor in office, and must be approved by the county judge of the county. The form of the letter of credit shall be modeled after the form attached in Appendix 2B.

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(4) The letter of credit shall be conditioned upon installation or construction of water and wastewater facilities meeting the criteria established under Division 2 of this subchapter and upon construction of facilities within the time stated on the plat, or on the document attached to the plat for the subdivision, or within any extension of time granted by the commissioners court.

(d) Financial guarantee. The county will determine the amount of the bond, letter of credit, or cash deposit required to ensure proper construction of adequate water and wastewater facilities in the subdivision.

(e) Alternative to county accepting a financial guarantee. The county may approve a final plat under this section without receiving a financial guarantee in the name of the county if:

- (1) the property being subdivided lies wholly within the jurisdiction of the county;
- (2) the property being subdivided lies wholly within the extra-territorial jurisdiction of a municipality; and
- (3) the municipality has executed an interlocal agreement with the county that imposes the obligation on the municipality to:
 - (A) accept the bonds, letters of credit, or other financial guarantees, that meet the requirements of this section;
 - (B) execute the construction agreement with the subdivider; and
 - (C) assume the obligations to enforce the terms of the financial guarantee under the conditions set forth therein and complete construction of the facilities identified in the construction agreement.

§ 364.55. Review and Approval of Final Plats

- (a) Scope of review. The county will review the final plat to determine whether it meets the standards of Division 2 and the requirements of Division 3 of this subchapter.
- (b) Disapproval authority. The commissioners court shall refuse to approve a plat if it does not meet the requirements prescribed by or under these rules.
- (c) Prerequisites to approval. Final plat approval shall not be granted unless the subdivider has accomplished the following:
 - (1) dedicated the sites for the adequate water and sewerage facilities identified in the final plat to the appropriate retail public utility responsible for operation and maintenance of the facilities; and
 - (2) provided evidence that the water facilities and sewerage facilities have been constructed and installed in accordance with the criteria established within these rules and the approvals from the commission of the plans and specifications for such construction, including any change orders filed with these agencies; or
 - (3) obtained all necessary permits for the proposed water facilities and sewerage facilities (other than for OSSF permits on individual lots within the proposed subdivision) and has entered into a financial agreement with the county secured by a bond or other alternative financial guarantee such as a cash deposit or letter of credit for the provision of water and sewerage facilities with the bond or financial guarantee meeting the criteria established in Division 3 of this subchapter.

§ 364.56. Time Extensions for Providing Facilities

- (a) Reasonableness. The commissioners court may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the required water and sewer service facilities must be fully operable if:

(1) any financial guarantees provided with the final plat as originally submitted are effective for the time of the requested extension or new financial guarantees that comply with § 364.54 are submitted which will be effective for the period of the extension; and

(2) the court finds the extension is reasonable and not contrary to the public interest.

(b) Timeliness. If the facilities are fully operable before the expiration of the extension period, the facilities are considered to have been made fully operable in a timely manner.

(c) Unreasonableness. An extension is not reasonable if it would allow a residence in the subdivision to be inhabited without water or sewer services that meet the standards of Division 2 of this subchapter.

§ 364.57. Criteria for Subdivisions that Occurred Prior to September 1, 1989

(a) Authority and scope. This section shall apply only to tracts of land that were divided into two or more parts to lay out a subdivision before September 1, 1989 and have not been platted or recorded. This section is in addition to the authority of the county to grant a delay or variance pursuant to *Local Government Code § 232.043* or a rule of the county adopted pursuant to such provision.

(b) Purpose. It is the purpose of this section to promote the public health of the county residents, to ensure that adequate water and sewerage facilities are provided in subdivisions within the jurisdiction of this county, and to establish the minimum standards for pre-1989 subdivisions for which no plat has been filed or recorded in the records of the county.

(c) Required plat. In the event that the owner of tract of land located outside the limits of a municipality who subdivided the tract into two or more parts to lay out a subdivision of the tract prior to September 1, 1989, including an addition, or to lay out suburban lots or building lots, and to lay out streets, alleys, squares, parks or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts, was legally obligated to, but has failed to have a plat of the subdivision prepared, approved by the commissioners court, and filed, the owner of a residential lot which was created by the subdivision may have a plat of the individual lot prepared and approved by the commissioners court as provided in this section in lieu of the filing of a plat of the subdivision.

(d) Special criteria. The commissioners court may approve the plat of a residential lot which does not comply with the provisions of §§ 364.15(b) of this title (sale restrictions), 364.36 of this title (Setbacks), 364.37 of this title (Number of Dwellings per Lot), 364.52 of this title (Final Engineering Report), and 364.54 of this title (Financial Guarantees for Improvements) as applied to an individual subdivided lot if such approval is in harmony with the general purpose and intent of these rules so that the public health, safety, and welfare may be secured and substantial justice done.

(1) Owners of individual lots in a single unplatted subdivision may file a joint request for approval of their respective individual residential lots.

(2) An application for approval of the plat of an individual lot shall be made in writing. The application shall state specifically the chapter, section, or subsection with which the plat does not comply and from which a waiver is being requested. The application shall contain available information and documentation which supports the requested approval. The applicant shall also provide such additional documentation as the commissioners court may request to support the application, including:

(A) a copy of a dated plat, sales contract, utility records, or other acceptable documentation that the subdivision occurred prior to September 1, 1989;

(B) the name and address of the original subdivider or the subdivider's authorized agent, if known;

(C) a survey and plat of the lot for which approval is requested, showing existing residences, roads, and utilities; and

(D) a deed, an affidavit of ownership or other evidence of ownership of the lot for which approval is requested.

(3) Approval of plats of individual lots shall be granted subject to the limitations of state law, and based on written findings by the commissioners court that:

(A) the lot for which approval is requested is within a tract that was subdivided prior to September 1, 1989, and is not owned by the original subdivider;

(B) a plat was required for the subdivision, but has not been filed with the county by the subdivider legally obligated to file it;

(C) an existing, currently occupied residential dwelling is located on the lot;

(D) existing water and sewer services which comply with the minimum standards set forth herein are available to the lot; and

(E) the request is reasonable, compliance with specified sections of these rules is impractical, and a waiver is not contrary to the public health and safety.

(e) Final determination. The commissioners court shall make the final decision on an application for a waiver, following review and recommendation by the county planning commission or department, if any. The applicant may withdraw a request for a waiver at any point in the process. If the requested waiver application is approved by the commissioners court, the county shall issue a certificate stating that a plat of the residential lot has been reviewed and approved.

§ 364.71. Oversight

The owner, by submitting a plat, acknowledges the authority of the county and state agencies to lawfully enter and inspect property for purposes of execution of their statutory duties. Such inspection will not release the owner from any obligation to comply with the requirements of these rules.

§ 364.72. General Enforcement Authority of County

The provisions of this chapter are enforceable pursuant to the specific provisions hereof related to enforcement and state law including Water Code, Chapter 7 and §§ 16.352, 16.353, 16.3535, 16.354, and 16.3545, and *Local Government Code*, § 232.037 and § 232.080.